



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

# COLUMBIA LAW REVIEW

---

Vol. XX

DECEMBER, 1920

No. 8

---

## OBJECTIVE LAW\*

What is law? Is the proper conception of it that of a rule of conduct that is imposed upon man living under social conditions, or that of a power, belonging to certain human wills, to impose themselves upon other wills? If law is a rule of conduct, what are the foundation, the object, the extent, and the sanction of this rule? Is it imposed on all men belonging to a definite social group, not only upon those called the governing classes, but also upon the governed? Is this rule imposed only on men in their relations to the members of one single group, or also in their relations with the members of another social group?

If law is a power peculiar to certain individual wills of imposing themselves upon other wills, how is this power to be explained? How is it that an individual will can be superior to other individual wills? Do individual human wills alone exist? Are there not also collective human wills? The different social groups,—nations, provinces, cities, families, associations, corporations,—have they a will distinct from that of their members?

If these wills exist, have they certain powers which are imposed on other individual or collective wills? Have they legal rights; if they have, what are their foundation and extent?

These are questions which have been asked since man began to reflect on the affairs of the life of society, and yet, in spite of an immense effort, no truly positive solution of these problems has ever been given. There is no one who does not affirm the existence of law, who does not declare that law prescribes or forbids such and such things, that a certain individual has or has not a legal right to do certain things, that a certain nation or a certain social group has legal rights. There are in all civilized countries faculties of law and professors of law, that is to say institutions

---

\*Translated by Margaret Grandgent, A. B., Cambridge, Mass., and Ralph W. Gifford, Professor of Law, Columbia Law School.

where the science of law is taught, and men whose business it is to teach that science. And yet here are affirmations as old as the world, the compass of whose meaning has not yet been positively determined; here is a science, the literature of which is considerable, but as to which there is no agreement in defining its object and bounding its domain.

If it were ever necessary to determine positively what legal right is, it is certainly in our epoch in which four great nations have just conducted in the name of right a terrible war against barbarous empires,—in which millions of men have heroically fallen in battle for the triumph of right. It seems that the more one has the sentiment of right, that the more one asserts that law exists, that it imposes itself, that it is at once the source of the life of peoples, and the essential object of their efforts,—so much the less precise is our conception of it, so much the less sharply bounded is its domain.

The fact is that in the century which has been pre-eminently that of the positive sciences, the domain of law has remained encumbered with notions of a purely metaphysical character; that we have not succeeded in applying to the study of the juridical problem a genuinely and exclusively realistic method. To eliminate everything which is not a fact directly observed, to eliminate everything above all the purely metaphysical notion of a subjective law,—that is to say, of the power of a will to impose itself as such upon other wills, is an indispensable pre-requisite to defining practically and positively the domain of law.

### § 1. SUBJECTIVISTIC CONCEPTIONS

In asking whether law exists and what it is, we may have two questions in mind:

The first is to know whether a man living in a given society is by that very fact subject to a rule of conduct whose violation involves a social reaction which can be organized. The rule of conduct so defined, if it exists, is what I call, by an expression which has now passed into current terminology, objective law. The expression arouses more or less clever witticisms among certain critics. It matters little to me; the word is now sanctioned and I keep it because it is convenient and expresses exactly an idea which is simple in itself, but which must be carefully distinguished from ideas which are doubtless close to it but nevertheless very different, and therefore to be designated by different words.

If those who investigate the nature and foundation of law had asked only the first question; if, in short, they had formulated only the problem of objective law, it seems to me that the solution would have been relatively easy. At least the problem could receive a positive solution. Discussions might have arisen about details and secondary points; but a unanimously accepted solution could have been given of the essential question, on the sole condition that we take an exclusively realistic point of view and dismiss every metaphysical element.

On the contrary, without indeed dismissing the problem of objective law, man has for centuries made it of secondary importance and wished to solve first the whole insoluble problem of subjective law. Endless controversies have been raised on the idea of subjective law. But whatever the proposed solution, the problem always reduces itself to this: are there certain wills which have, permanently or temporarily, a quality of their own which gives them the power to impose themselves as such upon other wills? If this power exists, there is a subjective law, which is thus a quality peculiar to certain wills, a quality which causes the wills which possess it to impose themselves upon other wills, which are in their turn burdened with a subjective duty toward the wills possessing this power.

The expression "subjective law" is the subject of the same criticisms and the same jests as the expression "objective law". I uphold the one and the other for the same reasons. So much the worse for those who will not make the distinction between these two very different things, and who wish to continue to designate entirely different things by the same word "law".

When the questions are asked: what is law, what is the foundation of law, what is its extent, does law impose itself upon force or does force create law, only subjective law is being considered. When we speak of the rights of man, of the rights of the State, of the right of peoples, we are still thinking of subjective law. Now, the question of the nature and foundation of subjective law is absolutely insoluble, and it is precisely because of the persistence with which this subjectivistic conception is made of foremost importance that the vagueness and uncertainty described at the beginning of this article still reign in the domain of law.

The question of the nature and foundation of subjective law is insoluble because, if there is a power, or quality, of the human will, the determination of the nature of this power or quality must depend upon a knowledge of the inmost nature of the human

will. Now, man cannot and will never be able to know this, because there is present an element which escapes his perception and observation. Since there have been philosophers who think, they have been discussing the question of knowing whether man has free will and the solution of the question has not advanced one step. There is not even agreement on the position of the question. The problem can never be solved, nor even stated in an exact manner, because we cannot determine its elements and *a fortiori* we can not solve it. All that can be said is that when I have willed something, I am conscious that a certain goal has been the cause of my decision. But as to knowing whether that goal might not have caused my decision and whether I might have chosen another solution and another goal, I do not know and none will ever know. In the affirmation of liberty there may be an act of religious belief, of philosophic conviction, an aspiration, a hope, a dream; but not an affirmation of scientific value. There is then no use in pretending to solve the question of subjective law, which must be a quality of human wills, if we can know nothing of the very nature of the will itself.

But this is not all. The predominance of the subjectivistic conception has become established not only in the problem of individual law, but also, and more than ever at present, in the problem of social law. Isolated man does not exist; groups more or less coherent, more or less extended, the family, the city, the nation, the professional class, tending to-day to become organized into a syndicate, form the setting in which man finds himself. The question of social right was therefore bound to arise, and has never arisen more acutely than at present. It arises in international relations in regard to what we have agreed to call nationalities, though it is perhaps hard to say of what they consist; still, their claims played a principal part in the unloosing of the world war and continue to do so at present in the immense effort attempted toward the reconstruction of Europe. Both for social right and for individual right, the problem is stated from the subjective point of view; the subjectivistic conception is always made of primary importance. Therefore the problem of social rights is, if possible, more insoluble than that of individual rights.

In point of fact, if collective groups have subjective rights, they must have a will distinctive from that of the individuals who compose them. But it cannot be affirmed that this collective will exists; for what are seen, what are ascertained, are manifestations of individual wills. This is denied and it is claimed that

there are collective manifestations very different from individual manifestations. We speak of the soul of the nation, the spirit of the people, the common "Ego", the great moral personalities—the nation, the family, classes, provinces, communities. We accuse of dull and vulgar materialism, of dense stupidity, those who will not believe that these great words express realities. All this is mere literature and poetry. Let us admit that belief in the personality, the soul, the will, of great collective groups is a metaphysical belief, which may be a powerful source of action, that it is a social fact which the sociologist cannot neglect. But a problem of a positive science is not solved by mythical beliefs nor by more or less poetic formulas.

How can the persistence of subjectivistic conceptions of law be explained? By a cause which we shall find again at every step in our studies: a need to some extent inherent in human nature, the exact perception of which illumines the whole history of the human mind. Man has always felt the need of explaining the visible by the invisible, of placing behind the phenomenon he ascertains directly an invisible entity which he makes the basis and the efficient cause of the phenomenon which he ascertains. In the field of the knowledge of nature, he has succeeded in freeing himself from this obsession. In the field of social and moral sciences, he has not yet reached this point. Behind the totality of natural phenomena, a creating and directing entity has been placed; behind a given physical phenomenon, the existence of a kind of spirit has been imagined; of a fluid, formerly phlogiston, then for a long time the electric fluid, or any other imaginary entity of the same kind; behind the phenomena of life, the principle of vitality; behind pathological phenomena, morbid diathesis; behind the phenomena of thought, the soul. In the same way there has been an effort to place behind individual or social situations—which appear to us with the characteristic that every attack made on them provokes a more or less organized reaction of a collective order—there has been an effort, I repeat, to place an entity of a metaphysical nature which has been called law behind these situations to explain them. Instead of saying simply that an attack on these situations violated a rule which is imposed upon men living in society, men have claimed that it was an attack on a pretended volitional substance which had a certain internal quality allowing it to impose itself upon other wills. This is a proceeding of exactly the same nature as that which consisted in saying that fire burns because of the phlogistic principle, that the

cell lives because of the principle of vitality, that the brain thinks because there is a soul, that the world exists because there is a creative God; and from the scientific point of view these different affirmations have the same value, that is—none.

From the position of the problem of law, we must therefore set aside completely the subjective point of view, because from this point of view it is entirely insoluble. The problem of law can only be formulated and solved from the objective point of view. More than ever I persist in thinking that this is an indispensable condition in the establishment of a truly realistic theory of law and of the State, and in reaching solutions which can be termed scientific.

## § 2. THE SOCIAL NORM

From this objectivistic point of view, the problem of law is easily stated. To begin with, there are two directly observed facts which no one can deny.

First, man is a being conscious of his acts and, second, man is a being who cannot live in isolation, who lives and has always lived in society with his fellows. What form have human societies assumed, and what form do they assume to-day? Is man a member only of the social group, nation, family, or tribe, of which he is a direct part, or should he be considered also a member of the vast society which makes up the human species? The answer to these questions is of little importance. The fact remains unquestionable, not as a postulate, but as a direct observation, that man is a conscious and social being.

Once this is stated, we immediately perceive the necessity for a law which is imposed upon man living in society, and the character of the law. If the direct ascertainment of the facts does not permit us to grasp the existence of a power belonging to the human will or to certain wills, on the other hand it reveals to us directly the existence of a law which is imposed upon men living in society. This law is simply that which obliges them to live in society because with their nature they cannot live except in society. By the fact alone that there are human societies and that there must be such societies once there are men, there is a social law. To affirm that man is a social being and that he lives in society, that he cannot live except in society, is at the same time to affirm the existence of a social law. It is not an *a priori* affirmation, an affirmation of a metaphysical nature, because it is the result of the observation of facts and of the physiological and psychological constitution of man.

What is the character of this law? Its character will be immediately perceived if it is remembered that man is a being conscious of his acts, and that he acts as a result of determining motives, whether his choice of them is free or not. I have already said that this is a point which escapes our knowledge and which, moreover, has no scientific importance. The indisputable fact is that man is a conscious being, conscious of what he wants, conscious of the motive which determines him to will and to act.

Some say that this will of man is free. Others say that it is completely determined by circumstances, by physiological and physical conditions, that it is irrevocably determined. No one knows anything about it; no one ever will know anything about it. The only thing which is certain, because it is directly ascertained by observation, is that the activity of man appears to be the conscious cause of his pursuit of a certain goal. The voluntary activity of man is a force which consciously pursues some purpose. Every act of man seems to receive its efficient or motive cause from within himself. He is the cause of a series of unconscious events; but he finds his own cause within himself, or rather in the conscious realization which the man has who performs an act of will. The chauffeur of an automobile who sets the motor of his vehicle in action is determined by the conscious goal which he wishes to attain:—to go from one place to another. His act of will finds its cause within himself; it is not caused by another event, but he is determined by a consciously pursued goal, and he becomes the cause of a series of unconscious (or most probably unconscious) events which cause each other. In a word, every act of human will manifests itself in the form of a bodily movement which is the product of an internal energy in the individual, consciously manifesting itself externally for the purpose of attaining a goal, and which brings about a series of unconscious events which succeed one another according to a certain law.

Once this is recognized, and it cannot but be recognized because it is self-evident, it is clear that the law to which man as a member of society is subjected is not a causal law. If all the acts of man entering into relations with his fellows are called social acts, we must say that all social acts are voluntary acts—that is to say, acts produced by the conscious activity of man pursuing a certain goal. Herein lies the fundamental difference between social events and physical events (properly called physical or biological), and this shows that no assimilation can be established between the laws of the physical world and the living world on one side, and social laws on the other. This assimilation, which certain



modern schools have wished to make, has retarded the development of the social sciences and prevented the arrival at a precise determination of the idea of law just as much—though in the opposite direction—as have the *a priori* metaphysical principles to which I have already tried to do justice.

Man then considers himself a real cause, an autonomous cause, producing energy in the scientific sense of the world. He is the conscious and autonomous energy which causes the electric spark in the example given above to leap forth. This consciousness, that he is the autonomous producer of energy is more or less distinct in man according to times, circumstances, and individuals, but it always exists, in the man of primitive races as well as in the most highly developed citizens of the great modern States.

Nevertheless, it must be added that the conscious choice of motives of action is not the only factor in human activity. There are incontestably certain facts which influence the direction of human activity and which escape the conscious perception of man. These elements do not, it is true, determine this activity; they modify it to a certain extent; but they leave in existence the conscious activity determined by human purposes. It is impossible to tell how much influence these elements have. But there is the same amount of error in denying their influence as in claiming that human activity is irrevocably determined by them. This was the great error of a certain school, notably that of Taine with his theory of environment. The celebrated sentence: "Virtue and vice are products like sugar and vitriol" is unscientific because it confuses two absolutely different kinds of phenomena, the conscious acts of men and the unconscious products of chemical reactions.

Soil, climate, and race are so many elements which influence social actions and which escape human consciousness. Their operation is certain; but it would be as little scientific to see in it an exclusive influence as to deny it. The voluntary act of a man remains always a conscious act, determined by some goal consciously chosen;—I do not say freely. Man is conscious that he had the power not to choose the goal which finally determined his course of action. It makes little difference if this be an illusion. The fact remains; there is not a man in the world who does not recognize that he had a distinct feeling that his course could have been determined by another goal than that which he chose, that he could have done something different from what he did.

The acts of men are not, then, the product of a blind and unconscious force, which succeed each other, and cause each other, as physical events appear to us. They are the result of the pursuit of a consciously selected goal, of a spontaneous manifestation producing a certain amount of energy, in one direction or another, according to a consciously made choice.

Once this is established, the social law whose existence we have recognized cannot be a causal law, because it applies to the voluntary and conscious acts of man. It can only be a law of purpose, a rule, a norm which directs and limits the conscious and voluntary activity of man, which establishes the object and goal of his will, which forbids certain acts and imposes certain others.

The social norm exists by the fact alone that there are human societies composed of conscious beings. Man lives and can only live in society. A society can exist only if the individuals who compose it comply with the law of the social being. As these individuals are conscious and wish certain things which are determined by a goal, the law of society necessarily and solely determines the object of their desire and the goal which determines it. Society and social norm are two inseparable facts. The social norm is a law of object and of purpose, not a causal law: it forbids or commands conscious acts.

### § 3. CHARACTERISTICS OF THE SOCIAL NORM

No one really denies the existence of a social norm. A consideration of the social norm as such, with every characteristic of its own which would be attributed to such and such a will laid aside, can be made by taking the objectivistic point of view which is opposed to the subjectivistic point of view to which I have already tried to do justice (§1). But even from the objectivistic point of view, metaphysics has been brought in; and here, too, has been an obstacle to the establishment of a positive social science, particularly a science of law.

It has been said, indeed, that the idea of a norm implied the recognition of a superior principle which is imposed upon the subject of this norm,—man; it has been said that a rule of conduct could be obligatory for man only if it were part of a principle superior to him, of a transcendental principle. All the numerous objections which have been made to the doctrine already demonstrated in 1900 in my book "*l'État, le droit objectif et la loi positive*", come down to this: Every rule of conduct which applies to man can only be conceived of if it is founded on a principle

superior to man; a simple fact cannot legitimize a rule, a law of purpose. Such is, in a word, the résumé of the long and vigorous criticism which my eminent colleague and friend Gény has directed against my doctrine. He writes: "That which makes the irremediable weakness of the system thus presented and makes it plainly unacceptable, is the fundamental disagreement between the two terms he claims to unite. It is a question of justifying and recognizing a rule of conduct which is imposed of necessity upon men living in society. And only the fact of the interdependence which constitutes the social life itself is alleged. Now, it would be necessary to demonstrate to us how a fact, even an incontestable fact, legitimately engenders the obligation to maintain and develop it. It is in vain that we are given to understand that since solidarity appears as an essential condition of life in society, man, who cannot get on without this life, is thereby led to practice solidarity. We still ask how the necessity of fact becomes a necessity of law." (Gény, *Science et Technique en droit privé positif*, II, p. 262.)

I persist in thinking that this objection always springs from the persistence of subjectivistic and metaphysical conceptions, even without the knowledge of those who formulate it. In § 1, I rejected the persistent conception of a certain power called law, as a power peculiar to certain wills. Now we are confronted by a conception of exactly the same kind and as useless as the preceding one. A rule of conduct, a norm, cannot be founded on fact, the social fact, if it is admitted that the rule gives birth to a duty which is imposed upon certain wills so as to constitute for them a peculiar characteristic affecting their very substance. I have rejected the idea of law understood as being a characteristic belonging to a will, as constituting for it a power which does not belong to others. In the same way I put aside the idea of duty conceived as creating a characteristic belonging to certain wills, a sort of negative power which out of these wills would make subordinate wills. Truly, a rule which had this power could only be founded upon a superior principle, a metaphysical conception. The idea of duty thus understood is a metaphysical idea, as well as the idea of law. Duty being thus understood, the formula of Auguste Comte: "True laws could only exist in so far as the regulating powers emanated from supernatural wills", is as true of duties as of laws.

But when I speak of a norm which is imposed upon men, a norm founded on the social fact, I have in mind a rule which

imposes itself upon them in fact, which modifies in no way the character of their being, the substance of their will, which does not establish a hierarchy of wills, which does not make one will subordinate to another any more than it makes one will superior to certain others.

The cells which compose an organism are subjected to the law of that organism. Everyone recognizes this; and the law of that organism is the one which presides over its formation and development. In the same way, the individuals who compose a social group are subject to the law of this group, a law which presides over its formation and development. Both these laws are laws of coordination. We do not call the law of the organism a norm, because we cannot affirm that the cells which compose it are conscious; we call the law of a social group a norm, because the individuals who are members act consciously, wish for a thing which they have in mind and because of a motive of which they are conscious. But, aside from this difference, there is no difference between the law of a living organism and that of a human society; and if it is admitted that the biological law is based upon the fact which constitutes this organism, we cannot see why the social norm as well should not be founded upon the fact which is society.

If there has been a marked unwillingness to admit it, if the ideas which I have set forth in my former works have met with the vigorous criticism just cited, it is because the critic does not place himself in the position I have adopted, which alone appears to me scientific. Either he identifies social facts with facts of physical nature or of the living world, and then assimilates social laws to physical or biological laws, both being truly causal laws (in which case law and morality would not be standardizing sciences, but only sciences of observation, determining the evolution of institutions and eliminating every directing principle of activity, every limiting rule of action), or else he maintains the metaphysical conception of individual liberty, he makes of the social norm a direct limitation of certain liberties, he sees in it the principle of a power belonging to certain wills, of a modification produced on the very substance of the human being; then indeed the existence of such a norm can only be admitted as being founded on a transcendental principle which a superior being imposes upon men.

Scientific truth lies in neither of these attitudes. The first overlooks an evident difference between social facts and physical or biological facts. The second is dominated by the persistent

conception of individual liberty. I put aside at the same time this assimilation of facts of different kinds and this extra-scientific belief; and I set up the social norm as a law of purpose regulating the coordination of individuals forming a social group, limiting their action, imposing certain acts upon them, but leaving intact the substance of their will. I eliminate the metaphysical liberty of man, the existence of which is possible but escapes the perception of the senses, and which, if it exists, remains intact in spite of the application of the law.

That the juridical social norm having these characteristics so exists without the necessity of the intervention of a superior principle, will be evident if we consider that certain social norms with these characteristics are recognized by all and we do not see why the social norm should not keep them when it becomes a rule of law.

#### § 4. THE OBJECT OF THE SOCIAL NORM.

The object of the social norm is the regulation of individual activity, the determination of the acts which man is obliged to perform or not to perform. In speaking of obligation, it is understood, as I have already explained, that it is a question, not of an obligation modifying the substantial will of the individual, but of a purely social obligation; that is, such that if it is not fulfilled, a certain instability is produced in the elements constituting the social group, and consequently a social reaction, that is, a spontaneous effort for the reestablishment of equilibrium. In other words, the social norm forbids every action or abstention which can produce a social disorder, so that when such an agitation has been produced there is a tendency in society to reestablish order.

In the same way, the social norm commands every individual to collaborate, as well as he can, and in proportion to his ability, to bring about the social order, for, if he does not, there results a collective loss and also necessarily a social reaction. The norm of individual acts is the very law of social life; it imposes itself upon the cells making up the social life; it forbids them to perform any act which might compromise it; it obliges them to perform all the acts by which they can contribute to it. The obligation which results is not properly speaking moral, but only social. If it is violated, there is no attack upon a superior principle of morality, but only upon the equilibrium of the social group; there is a certain disorder which results in a more or less energetic reaction against the violator of the norm.

The neo-individualistic doctrines claim that the primordial object of every social norm is respect for individual autonomy; that since the individual remains master of himself in society, society exists and lives only through the individual, and that thus the object and the foundation itself of every social norm can only be individual autonomy. It is important to say that the defect in these doctrines is in bringing in only one of the elements which constitute the human being, the individual element. To be sure, man is doubtless an individual autonomous being, conscious of this autonomy; but he is at the same time a social being; to forget this is to fail to recognize one whole portion of the reality.

Now, the social norm regulates the activity of man himself, of man in his entirety, both the individual and the social being. It includes the whole of man. The object of the social norm is doubtless the respect for individual autonomy, but only in so far as it is an element of social life. It is the respect for the autonomous human individual in so far as he is a member of a social group and as he contributes to the development of this group. To consider man alone and in himself is to see only a part of the reality. This was the great error of the 18th century, which saw man only in the abstract; man is a concrete being who cannot be detached by thought from his surroundings, from the group to which he belongs, which to-day is the nation. The object of the social norm is then to oblige every individual to act in such a way that he respects the autonomy of others and his own autonomy, in so far as they are elements of national life. How is man an element of national life and how should he act to assure its maintenance and development? Here appears the great fact of social solidarity or interdependence.

The fact of social solidarity was made prominent and minutely described by Durckheim in his celebrated book, "*La division du travail social*", (1891). I have tried to describe it by presenting it from a point of view slightly different from that of Durckheim in my book, "*L'état, le droit objectif et la loi positive*", (1901) and in the first edition of my treatise on constitutional law (1911) I, p. 14 *et seq.* I ask permission of the reader to refer him to it. Here I will state only the essentials.

Men are united in society and remain united, particularly to-day; they are united and remain united in national societies because they have common needs and also because they have different needs as well as different aptitudes.

Men have common needs which can be satisfied only by life

in common. Men lend each other mutual assistance for the realization of their common needs by putting together their similar aptitudes. This constitutes the first element of social life and forms what Durckheim calls solidarity by similitude or mechanical solidarity.

On the other hand, men have different aptitudes and diverse needs. They assure the satisfaction of these needs by an exchange of services, each one using his own aptitudes to satisfy the needs of others, in return for which he receives from them a contribution of services. Thus there is produced in human societies a vast division of labor, which is the preeminent fact of social cohesion; it is, (still following Durckheim's terminology) solidarity by division of labor or organic solidarity. Individual autonomy appears here as an essential factor of social solidarity, since this solidarity will be greater the more individual activity develops. Different needs will be better satisfied, the social bond will be stronger, social life more intense, in proportion as individual activities develop more energetically and freely.

The fact of social solidarity is not disputed and in truth cannot be disputed; it is a fact of observation which cannot be the object of controversy. It takes on different aspects in different countries. Sometimes, as in modern societies, it is solidarity by division of labor which stands out most prominently. Sometimes, on the other hand, solidarity by similitude is preponderant, as in societies in the early stages of civilization. However this may be, solidarity is a permanent fact, always identical in itself, the irreducible constitutive element of every social group. But if the fact of solidarity has not itself been disputed, it has been said that it could not be the source of the social norm, nor even the object of this norm, because a fact cannot be the source of an obligatory rule nor oblige a will to conform to it.

I have already replied (§§ 2 and 3) that the objection would have some foundation if I viewed the social norm as a rule creating an obligation which affects the very will of the subject, creating for him a moral duty in the metaphysical sense of the word, modifying the will in its substance. But this is not so; this norm is a rule which leaves all the wills what they are, a rule whose violation involves a social reaction and nothing else, a rule which should not be violated because, if it is violated, social life is disturbed, and then the social organism reacts against the author of the violation. Nevertheless, this rule is not a biological law because the individuals to whom it applies are conscious of their acts and of the motives determining them.

Does the social norm so understood apply to all the acts of men? Obviously not. Many human acts escape it or are of no importance to it. Those acts can be called social which fall within the scope of the social norm as opposed to those which escape it and which can be called individual acts. Doubtless, in a sense, all man's acts are individual acts; they all emanate from a voluntary activity whose source is the individual. It has not been proved and will never be proved that social groups are of themselves the sources of an activity or a will distinct from those which compose them. Nevertheless there is no doubt that among the manifestations of individual activity, some have a social character and others a purely individual character; and that only the first are subject to the social norm which forbids or commands them. What is the criterion which allows us to recognize them?

It can only be negative, and yet, I freely admit, it is quite vague and essentially evolutionary. All the acts of man which would happen in exactly the same way if one thought of man as living alone, or, in other words, those acts which have absolutely nothing to do with the elements of social interdependence, escape the control of the social norm. The social character of an act is apparent in the collective reaction which results when it is performed or omitted. "A social fact, a social situation", writes Durckheim, "is to be recognized by the power of external coercion which it exercises or can exercise on individuals, and the presence of this power can in turn be recognized either by the existence of a few set sanctions or by the resistance which the fact opposes to every individual enterprise which tries to do violence to it."<sup>1</sup>

[TO BE CONTINUED]

LÉON DUGUIT

DEAN, FACULTY OF LAW,  
UNIVERSITY OF BORDEAUX

---

<sup>1</sup>Durckheim, *Les règles de la méthode sociologique* 15. This criticism is continually changing and in perpetual evolution. The same acts can, at certain periods, escape the control of the social norm which, at other periods, are imperatively regulated by it. Essentially individual things like the hours for meals, the quantity and quality of food consumed, the hours of rest, can become at certain times, during a war for instance, the objects of severe social regulations. On the other hand, certain acts which for centuries have been subject to a rigorously imposed social norm tend more and more to become purely individual acts free from any imperative regulations. I have in mind particularly acts of a religious nature which in all countries become little by little purely individual acts. On the contrary, acts which for centuries have escaped the social norm become social,—as the acquisition of a certain education, the work of foresight and charity. But these are points which do not need to be developed.